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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

DOUBLE JUMP, INC.

Debtor.

Lead Case No.: BK-19-50102-gs
(Chapter 7)

Substantively consolidated with:

19-50130-gs	DC Solar Solutions, Inc.
19-50131-gs	DC Solar Distribution, Inc.
19-50135-gs	DC Solar Freedom, Inc.

**MOTION FOR ORDER (1) APPROVING
COMPROMISE AND SETTLEMENT
AGREEMENT WITH FALLBROOK
SECURITIES CORPORATION AND FEI
INVESTORS I, LLC AND (2) FOR
AWARD OF CONTINGENCY FEE**

**Hearing Date: May 27, 2021
Hearing Time: 9:30 a.m.**

Christina Lovato, the duly appointed and acting trustee ("*Trustee*") for the substantively consolidated chapter 7 estates of DC Solar Solutions, Inc. ("*Solutions*"), DC Solar Distribution, Inc. ("*Distribution*"), DC Solar Freedom, Inc. ("*Freedom*," and together with Solutions and Distribution, "*DC Solar*") and Double Jump, Inc. ("*DJ*," and together with DC Solar, the "*DC*

1 *Solar Estate*”) files her motion to approve a compromise and settlement with Fallbrook Securities
 2 Corporation (“*Fallbrook*”) and FEI Investors I, LLC (“*FEI*”, and with Fallbrook, the “*Fallbrook*
 3 *Parties*”) pursuant to F.R.Bank.P. 9014 and 9019, and for payment of a contingency fee to special
 4 litigation counsel (“*Motion*”). The Motion is supported by the separately filed Declaration of
 5 Christina Lovato and is based upon the following discussion of facts and law. As permitted by
 6 F.R.Evid. 201, the Trustee also requests the Court take judicial notice of the papers on file in the
 7 DC Solar Estate.

8 **Factual Background**

9 **A. Procedural Background**

10 1. Prepetition, DC Solar was engaged in a business related to manufacturing,
 11 marketing, selling, and leasing mobile solar generators.

12 2. However, certain of DC Solar’s insiders, including Jeff Carpoff and Paulette
 13 Carpoff (“*Carpoffs*”), were also perpetrating a Ponzi scheme (“*Carpoff Ponzi Scheme*”).

14 3. On December 18, 2018, federal law enforcement raided DC Solar’s business
 15 locations, effectively closing down DC Solar’s operations.

16 4. In late January and early February 2019, the Debtors filed for chapter 11 relief
 17 before this Court, commencing these bankruptcy cases (“*Bankruptcy Cases*”).

18 5. On March 22, 2019, this Court converted the Bankruptcy Cases to cases under
 19 chapter 7 and appointed the Trustee as chapter 7 trustee of the Debtors’ estates.¹ The Bankruptcy
 20 Cases have been substantively consolidated.²

21 **B. Trustee’s Claims Against the Fallbrook Parties**

22 6. Within four years of the Petition Date, the Debtors transferred \$3,555,575.00 to
 23 Fallbrook Securities (“*Fallbrook Transfers*”).

24 7. Fallbrook is an investment bank / placement agent that assists entities in “tax
 25 equity” investments that reduce tax liability. Fallbrook worked with another entity to seek
 26

27
 28 ¹ ECF Nos. 439 & 440.

² ECF No. 2613.

1 investors in the DC Solar tax equity transactions, was successful, and was paid by the Debtors (the
2 Fallbrook Transfers) for bringing in those investors.

3 8. FEI was an investor that acquired certain MSGs in a DC Solar sponsored tax equity
4 transaction. DC Solar paid FEI on a note per that transaction. DC Solar made a single payment
5 of \$25,740 within 90 days of the Petition Date (“*FEI Transfer*”).

6 9. Fallbrook and FEI are affiliated.

7 10. The Trustee informally asserted avoidance claims against the Fallbrook Parties,
8 including that (1) the Fallbrook Transfers were not in exchange for “value” or “reasonably
9 equivalent value”,³ and (2) the FEI Transfer is avoidable as a preference.

10 11. The Parties (the Trustee, Fallbrook, and FEI) agreed to a judicial settlement
11 conference before U.S. Bankruptcy Judge Zive and sought and obtained an Order from this Court
12 directing and scheduling that conference.⁴

13 12. However, the Parties did not wait for the day of the settlement conference to begin
14 settlement communications. As part of those communications, the Trustee requested, and
15 Fallbrook confidentially provided, significant financial information regarding “collectability” of
16 any resulting judgment. The Trustee relied on that information in her decision-making.

17 13. The Trustee also reviewed and considered numerous documents. These documents
18 included those relating to: (1) the Transfers and the Fallbrook Parties; and (2) the Carpoﬀ Ponzi
19 Scheme more generally.

20 14. The Parties’ informal settlement communications led to an agreement on the terms
21 of a consensual resolution in the days prior to, and on the very day, that settlement conference
22 briefs were due to Bankruptcy Judge Zive. The Parties immediately notified the applicable judicial
23 personnel and sought an Order (which was entered) vacating the settlement conference.⁵

24 15. Subject to this Court’s approval, the Trustee and the Fallbrook Parties have entered
25 into an agreement on the terms of a settlement of claims and have executed the Stipulation of
26 Settlement attached as **Exhibit 1** to the Trustee’s Declaration (“*Settlement Agreement*”).

27
28 ³ See e.g., *Hoffman v. Markowitz*, 746 F. App’x 641 (9th Cir. 2018).

⁴ ECF Nos. 2504 & 2525.

⁵ ECF Nos. 2649 & 2650.

1 encountered in the matter of collection; and (4) the paramount interest of the creditors and a proper
2 deference to their reasonable views in the premises.

3 20. Compromises are favored under the Bankruptcy Code, and approval of a
4 compromise rests in the sound discretion of the Court. Protective Committee for Independent
5 Stockholders of TMT Trailer Ferry, Inc., v. Anderson, 390 U.S. 414, 424 (1968). The bankruptcy
6 court is afforded wide latitude in approving compromise agreements which it determines to be fair,
7 reasonable, and adequate. In re Woodson, 839 F.2d 610 (9th Cir. 1988). The court need not conduct
8 an exhaustive investigation into the claim sought to be compromised. In re Walsh Construction,
9 Inc., 699 F.2d 1325, 1328 (9th Cir. 1982).

10 21. The Trustee, in her informed business judgment, submits that approval of the
11 Settlement Agreement is in the best interests of the Debtors' estates.

12 22. The Trustee notes that because Fallbrook and FEI are affiliated and have the same
13 counsel, the Trustee communicated with them in a unified manner for efficiency purposes. And
14 further, because the Trustee's claim against FEI is for a relatively small amount, and a far smaller
15 dollar amount than her claim against Fallbrook, the Trustee's claims against Fallbrook were the
16 driving force in her decision-making process.

17 **A. The Settlement Should Be Approved**

18 23. Based upon these principles, the Trustee submits that the Settlement Agreement
19 falls well above the lowest point of the range of reasonableness and should be approved.

20 **Probability of Success in Litigation**

21 24. This consideration militates in favor of approval of the Settlement Agreement.

22 25. While the Trustee believes her potential claims are meritorious, all litigation
23 presents risks. Here, among other potential defenses, Fallbrook could assert that value was given
24 to the Debtors notwithstanding the Hoffman decision.

25 26. If this were proven to be true, Fallbrook would have a complete defense to the
26 Trustee's claims given that, based on the Trustee's investigation, the Trustee does not challenge
27 that Fallbrook received the Transfer in good faith.
28

1 27. The Trustee believes she has a strong preference claim against FEI, but again, all
2 litigation has risks.

3 **Complexity of Litigation and Attendant Expense, Inconvenience and Delay**

4 28. This consideration also militates in favor of approval of the Settlement Agreement.

5 29. While the Trustee's claims are typical claims litigated before this Court, and the
6 Trustee's special counsel is compensated on a contingency-fee basis, the Trustee's claims would
7 require probing of the intent of the Carpoiffs – the Debtors' former insiders who have pled guilty
8 to crimes – and thus the Debtors' estate would suffer the expense of prison-depositions (among
9 other things). The Trustee may also require an expert witness in connection with proving her
10 prima facie case, which would be a significant expense to the estate.

11 30. The Settlement Agreement addresses these concerns. The parties avoid litigating
12 fact-specific claims with the associated expense and delay. Here, the DC Solar Estate gains
13 meaningful benefit by resolving this matter pre-suit, without further risk, and before meaningful
14 expenses are incurred.

15 **Collectability**

16 31. Collectability is a significant factor militating in favor of approval of the Settlement
17 Agreement.

18 32. The Trustee requested financial information from Fallbrook, received that
19 information, requested additional information, and received that information (together, the
20 “*Fallbrook Financial Information*”).⁷ The Trustee has relied on the Fallbrook Financial
21 Information in agreeing to the Settlement Agreement.

22 33. The Fallbrook Financial Information revealed to the Trustee that Fallbrook does
23 not have the financial wherewithal to pay a judgment in the amount of the Fallbrook Transfers.
24 Furthermore, the Trustee's analysis was that much (if not all) of Fallbrook's assets would be
25 utilized and dissipated through litigation defense costs.

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⁷ As noted above, the Fallbrook Financial Information is confidential.

1 40. Pursuant to 11 U.S.C. § 330(a), the bankruptcy court reviews the services the
2 professional provided, and decides whether the requested compensation is reasonable. The Trustee
3 submits that the requested contingency fee satisfies this standard.¹⁰

4 41. First, 25% is a materially lower percentage than often charged by commercial
5 contingency counsel.¹¹ Second, the Court pre-approved the contingency fee arrangement one year
6 ago after notice to all parties-in-interest.¹² Third, given the estate's limited assets when MB was
7 retained, the contingency fee arrangement benefitted the estate by shifting material risk from the
8 estate onto MB and ensures that MB's compensation is directly tied to performance and results
9 achieved.¹³ Fourth, MB has performed significant work (including formal and informal discovery)
10 investigating and pursuing this and other claims in a high-quality and expeditious manner given
11 the complexities of these cases and despite the limitations imposed by COVID-19.

12 42. Moreover, in a financial fraud case much of special counsel's investigatory function
13 is to analyze the facts and circumstances related to a large number of potential targets to determine
14 if claims do or do not exist. Here, counsel has invested substantial efforts and resources confirming
15 the estate likely does not hold meritorious claims against many otherwise potential targets. Under
16 the fee agreement, counsel receives no compensation for those efforts, even though they benefit
17 the estate. The Trustee notes these efforts, for which counsel receives no compensation.

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20 ¹⁰ Special counsel: (1) performed high-quality work; (2) addressed somewhat challenging factual
21 and legal questions; (3) employed significant skill; (4) obtained a timely result; (5) performed its
22 work efficiently; (6) drew upon a high level of capabilities and experience; and (7) was met with
opposition by sophisticated counsel.

23 ¹¹ See In re Private Asset Grp., Inc., 579 B.R. 534, 544-45 (Bankr. C.D. Cal. 2017); see also In re
24 Pearlman, 2014 WL 1100223, *3 (Bankr. M.D. Fla. Mar. 20, 2014) ("Resting again on its
independent judgment, the Court finds the 35% contingency fee to be reasonable and in line with
similar non-bankruptcy rates.").

25 ¹² See generally, In re Gurley, 379 B.R. 194, 201 (Bankr. M.D. Fla. 2007) (considering that the
26 contingent fee arrangement was contemplated at the outset in determining a reasonable fee).

27 ¹³ Fann Contracting, Inc. v. Garman Turner Gordon LLP, 620 B.R. 141, 147 (D. Nev. 2020); see
28 also, generally, In re Smart World Techs., LLC, 423 F.3d 166, 180 (2d Cir. 2005) ("Here, Smart
World's counsel was retained on a contingency basis, meaning that Smart World's pursuit of its
adversary claims would have subjected the bankruptcy estate to no risk, while allowing the estate
to reap any potential award.").

Conclusion

43. Based upon the foregoing, the Trustee requests an order approving the Settlement Agreement as well as the contingency fee, and granting such other and further relief as this Court deems just and proper.

DATED: April 19, 2021.

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